

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

DECLARATORY RULING NUMBER 2007-01

Requestor:

Crockery Creek Turkey Farm, LLC
Four D Farms, LLC
Michigan Allied Poultry Industries
Michigan Cattlemen's Association
Michigan Corn Growers Association
Michigan Farm Bureau
Michigan Milk Producers Association
Michigan Pork Producers Association
Michigan Soybean Association

SUBJECT: Challenge to Concentrated Animal Feeding Operation (CAFO)
Permitting Program and Authorizing Statute and Rules

On June 27, 2007, the Department of Environmental Quality (DEQ) received a Request for a Declaratory Ruling (Request) and memorandum in support of the Request from the parties identified above (the Petitioners). The Request seeks a determination on whether all large CAFOs in Michigan must apply for a National Pollutant Discharge Elimination System (NPDES) permit pursuant to Michigan's statutes and rules.

INTRODUCTION

As the agency charged with protecting and enhancing Michigan's environment, the DEQ respects and welcomes input from all citizens as the DEQ administers its regulatory responsibilities, pursues innovation, and makes improvements to our regulations and programs. This will enable us to move toward the long-term goals of environmental and public health protection, improved quality of life, and a sustainable

future. In all of its actions, the DEQ must act within the authority granted to it by Michigan law and fairly and consistently apply regulations within the state.

As a threshold matter, the DEQ has determined that two of the Petitioners have not demonstrated sufficient standing to participate in this proceeding. Those Petitioners are the Michigan Corn Growers Association and the Michigan Soybean Association.¹ While the DEQ recognizes that general discussions related to the agricultural industry in Michigan must include interest groups as diverse as the industry itself, the regulatory program at issue here relates solely to a small segment of the livestock industry and neither the Michigan Corn Growers Association nor the Michigan Soybean Association has sufficiently identified their members' interest in permits required only for very large livestock producers.

DECLARATORY RULINGS BY THE DEQ

Requests for declaratory rulings by a state agency are governed by Michigan's Administrative Procedures Act, 1969 PA 306, as amended (APA); MCL 24.201 *et seq.*, and administrative rules promulgated to implement the requirements of the APA. Specifically, Section 63 of the APA states:

On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure

¹ The Michigan Soybean Association also failed to submit the required form entitled, "Request for Declaratory Ruling." The forms for all of the other petitioners were submitted to the DEQ under a cover letter from Mr. Andrew Kok dated July 5, 2007.

for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.²

Additional guidance related to the DEQ's options for properly responding to the request is set forth within subrule (2) of Rule 81:

- (2) Within 60 days of receipt of the request, the department (*defined as DEQ*) shall take 1 of the following actions:
- (a) Deny the request and state the reasons for the denial.
 - (b) Grant the request and issue the declaratory ruling.
 - (c) Advise the person requesting the ruling that further clarification of the facts must be provided, or that the department requires additional time to conduct a review, including, but not limited to, an on-site investigation.³

The DEQ has determined that a denial of the Petitioners' request would be appropriate due to the following deficiencies:

1. The Petitioners' request fails to set forth "an actual state of facts" to which application of a rule or statute administered by the DEQ is sought. While two of the Petitioners are indeed CAFOs, other than bare assertions that hypothetical CAFOs "do not discharge," no verifiable facts are provided by the Petitioners to support those claims with respect to actual CAFOs. (See Petitioners' memorandum at 2.) However, the DEQ finds that those facts are not

² MCL 24.263, emphasis added.

³ 2003 ACS R 324.81(2)

necessary in this matter as the question posed by the Petitioners simply requires an interpretation of Michigan law as it applies to all large CAFOs.⁴

2. The Petitioners' argument supporting its request relies in large part on a section within a budget bill (enrolled Senate Bill 1086, which would become Public Act 343 of 2006 as cited in Petitioners' memorandum at 3) that attempted to amend Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); MCL 324.3101 *et seq.* by reference. As noted within Governor Jennifer M. Granholm's veto message to the Michigan Senate dated August 15, 2006, the section relied upon by the Petitioners is unenforceable as it attempts to amend the NREPA by reference.
3. Finally, the remainder of the Petitioners' argument relies upon their interpretation of federal law over which the DEQ has no jurisdiction. The federal government has never vested within the DEQ any of its authority with respect to implementation of the federal Clean Water Act (CWA) in the state of Michigan, but rather has suspended federal permitting under the CWA in recognition of satisfactory state law and permitting programs⁵. The DEQ may only examine the applicability of a "statute administered by the agency or of a rule or order of the agency" in responding to a request for a Declaratory Ruling.

⁴ The DEQ assumes that the Petitioners' request deals solely with large CAFOs as defined by 2005 ACS 323.2103(g), as only large CAFOs are required to obtain NPDES permits without having had an "actual" or documented discharge.

⁵ 33 USC §1342(b)

MCL 24.263, also see *Booth v. Consumers Power Company*, 226 Mich. App. 368 (1998).

The DEQ has determined a denial of the Petitioners' request would be appropriate. However, the DEQ has elected to respond in light of the importance of the general question posed by the Petitioners (see below), the significant level of confusion displayed within the Petitioners' memorandum with respect to the function of state law governing Michigan's NPDES permitting program for large CAFOs, the considerable public concern reflected in recent media reports and legislative inquiries related to "factory farms," and the high probability of large CAFOs being in violation of existing law if they accept the Petitioners' faulty arguments and fail to apply for NPDES permits.

QUESTION INVOLVED

In their request, the Petitioners pose the following question to the DEQ:

Does MDEQ's Rule 323.2196, which requires Concentrated Animal Feeding Operations ("CAFOs") in the State of Michigan to apply for and obtain a National Pollution [sic⁶] Discharge Elimination System ("NPDES") permit, apply to CAFOs with potential discharges to State waters instead of merely regulating *actual* discharge?

The DEQ has interpreted this question to ask whether all large CAFOs in the state of Michigan, as defined by R 323.2103(g), are required to obtain Michigan NPDES

⁶ State and federal law recognize the permitting program at issue here as the National Pollutant Discharge Elimination System, or NPDES.

permits in accordance with R 323.2196 and its authorizing statute, Part 31 of the NREPA.

The DEQ finds, for the reasons set forth below, that large CAFOs must apply for and obtain coverage under Michigan's NPDES permitting system unless the DEQ makes a determination that the CAFO has sufficiently demonstrated "No Potential to Discharge" pursuant to R 323.2196(4).

DISCUSSION

In supporting their contention that Michigan law only allows the DEQ to require NPDES permits of CAFOs with "actual" discharges, the Petitioners rely heavily on inapplicable federal law and misstatements of fact and law. It is the DEQ's position that all large CAFOs discharge or may discharge to waters of the state.⁷ Therefore, all large CAFOs in Michigan must obtain a Michigan NPDES permit or demonstrate "No Potential to Discharge" to the satisfaction of the DEQ in accordance with provisions of Michigan's CAFO Rule,⁸ located at 2005 ACS 323.2196(4).⁹

The Petitioners have also elected to include another perceived group within the livestock industry, those large CAFOs that "do not have discharges, other than

⁷ "Waters of the state" of Michigan governed by Part 31 of the NREPA include all surface waters and groundwater; MCL 324.3101(z), whereas the CWA is limited to "navigable waters." 33 USC 3162(7).

⁸ The Michigan's CAFO Rule consists of R 323.2102, R 323.2103, R 323.2104, and R 323.2196, along with provisions of 40 CFR adopted by reference at R 323.2189(a), (c), and (l).

⁹ Subrule 323.2196(4) sets forth the process for the DEQ "[i]n making determinations for no potential to discharge for large CAFOs."

agricultural storm water discharges.” (See Petitioners’ memorandum at 2.) The Petitioners repeatedly mention this “agricultural storm water exemption.” However, there is no “agricultural storm water exemption” in Michigan law, although there is such an exception in federal law,¹⁰ and, as explained in greater detail below, the Michigan NPDES program operates under Michigan law.

Finally, the DEQ and the stakeholder organizations that participated in the promulgation of Michigan’s CAFO Rule recognized this discrepancy between state and federal regulations and clarified the state’s position within R 323.2196(5)(d) as follows:

Storm water discharges from land areas under the control of a CAFO where production area waste or CAFO process wastewater has been applied in compliance with field-specific nutrient management practices developed in accordance with R 323.2196(5)(a), and such discharges do not cause or contribute to a violation of water quality standards, are in compliance with this rule, provided such discharges are authorized by an NPDES permit.

This Declaratory Ruling formally sets forth the DEQ’s interpretation of state law with respect to large CAFOs and explains the interactions between state and federal laws related to water quality.

Suspension of Federal NPDES Permitting in Michigan

The CWA establishes a permitting framework, known as the National Pollutant Discharge Elimination System or “NPDES” by which discharges of pollutants to

¹⁰ 33 USC 3162(14)

navigable waterways from point sources are controlled with the goal of maintaining and improving water quality.¹¹ The state of Michigan, through the DEQ, is 1 of 45 states with permit programs administered in accordance with state law and approved by the United States Environmental Protection Agency (USEPA). In these states, the USEPA has suspended the federal NPDES program. Following the suspension of the federal program, a separate and independent state agency, relying on state law and rules, administers the NPDES pollution controls.¹² Until the USEPA revokes its approval of a state program, dischargers in those states are not required to apply for or receive a federal NPDES permit. The approved programs are state programs that function *in lieu of* the federal program and are not in a delegation of federal authority.¹³

At various places in the original Senate Report on this provision [33 USC §1342], there is mention of the concept of the Administrator's "delegation of authority" to the states. S. Rep. No. 414, 92d Cong., 2d Sess., *reprinted in* 1972 U.S. Code Cong. & Admin. News 3668, 3736. However, those references in passing do not measure up against more specific statements contained in the legislative history that the states' programs were to be based on their own authority, not on a delegation of federal authority. See *California v. United States Dep't of Navy*, 845 F.2d at 225; *Mianus River Preservation* [**23] Committee v. Administrator, 541 F.2d 899, 905 (2d Cir. 1976)(citing specific passages). See also H.R. Rep. No. 830, 95th Cong., 1st Sess., *reprinted in* 1977 U.S. Code Cong. & Admin. News 4327, 4479 (stating that the state permit programs are "not a delegation of Federal authority," but instead are state programs which "function in lieu of the Federal program").^[14]

The legal authority for administering the Michigan NPDES program is contained in Part 31 of the NREPA¹⁵ and the administrative rules promulgated pursuant to Part 31. Part 31 is the current reflection of Michigan citizens' longstanding belief that protection

¹¹ 33 USCS §1342.

¹² *Mianus River Preservation Comm v Administrator, EPA*, 541 F2d 899, 905 (2d Cir 1976)..

¹³ *Ringbolt Farms Howewners Assoc v Hull*, 714 F Supp 1246, 1253 (D Mass 1989).

¹⁴ *Id.*

¹⁵ MCL 324.3101, *et seq.*

of water resources within and surrounding the state is of the utmost importance. In 1929, Michigan's Legislature enacted the first law in the nation whose sole purpose was to protect water quality. That act, the Stream Pollution Control Act, created the Stream Control Commission (which later would become the Water Resources Commission). While the 1929 act has certainly evolved, most notably when Congress created the CWA in 1970, over the years the fundamental premise has remained the same: Michigan has broad authority to protect waters of the state from pollution.

On occasion, when the USEPA modifies portions of its rules (found in the Code of Federal Regulations [CFR]) related to the implementation of the CWA and NPDES, the USEPA may require that approved states in turn adjust corresponding state programs and regulations to remain at least as stringent as the new federal requirements and to continue the suspension of federal permitting within the state.

Michigan was one of the first states to seek and obtain USEPA approval to administer the NPDES program within the state under state law. When Michigan first sought suspension of federal permitting in 1973, it elected to adopt the CWA's nomenclature for the federal permitting program rather than a unique "Michigan-only" name to identify permits as state permits as most other states have since done.¹⁶ This adoption of a federal name (the NPDES) for a state permit rather than a state-specific name, for instance MiPDES, has at times led to confusion on the part of the regulated community.

¹⁶ For example, federal permitting is also suspended in Wisconsin. Permits issued by that state are called Wisconsin Pollutant Discharge Elimination System (WPDES) permits.

The Michigan NPDES program requires point source dischargers to apply for and obtain a permit from the DEQ's Water Bureau. Point sources are usually a pipe or other discrete conveyance; however, a CAFO is also defined as a point source.¹⁷ A CAFO is an animal feeding operation that stables or confines a prescribed number of animals or is otherwise designated as a CAFO by the DEQ.¹⁸ All large CAFOs in the state of Michigan are required to obtain NPDES permits from the DEQ.¹⁹

In 2003, the USEPA finalized revisions to its NPDES regulations. The Federal CAFO Rule was promulgated to strengthen the existing regulatory program for CAFOs in recognition of continued water quality impacts attributable to large-scale livestock operations.²⁰ The Federal CAFO Rule also set forth a framework for states and other permitting authorities to use as a baseline for the development of their own CAFO permitting programs.

The development of the Federal CAFO Rule resulted in the DEQ promulgating its own administrative rules specific to Michigan NPDES CAFO permitting. Those rules became effective in April 2005 (Michigan's CAFO Rule²¹) and are a revision to Michigan's USEPA-approved NPDES permitting program. As previously stated, the state law authority for the promulgation of Michigan's CAFO Rule was -- and is -- Part 31.

¹⁷ R 323.2104(c)(ix).

¹⁸ R 323.2102(i).

¹⁹ R 323.2196(1).

²⁰ Preamble to the Federal CAFO Rule, Federal Register Vol. 68, No. 29 at page 7176.

²¹ R 323.2102, R 323.2103, R 323.2104, and R 323.2196.

The revision of state NPDES programs is governed by 40 CFR, §123.62. When the Federal CAFO Rule was promulgated in 2003, the USEPA followed its normal practice by requiring that states with authorized NPDES programs either demonstrate to the USEPA that the state program meets the minimum requirements of the newly promulgated rule or provide USEPA with a plan for state rulemaking and, in some cases, proposals to amend authorizing state statutes.

Michigan evaluated its program at the time and determined that rulemaking would be necessary so that Michigan's NPDES implementing regulations would be at least as stringent with respect to CAFOs as the requirements of the new Federal CAFO Rule. In the development of its new conforming rules, the DEQ relied upon the framework provided by the Federal CAFO Rule, Michigan's unique environmental conditions, as well as its existing administrative rules governing the state's NPDES program. The DEQ also convened a diverse stakeholder work group to participate in the promulgation of the Michigan's CAFO Rule. As illustrated by Exhibit A, a number of the Petitioners actually participated in the work group.

Following the promulgation of the Michigan's CAFO Rule in April 2005, the USEPA reviewed DEQ's CAFO permitting program, which includes the state statute and new rules, and approved the revised program without qualification on July 1, 2005 (Exhibit B). With USEPA approval, the federal program remains suspended in favor of the separate and independent authority of the Michigan's CAFO Rule. Judicial review

of USEPA's approval of DEQ's permitting program vests exclusively in the United States Court of Appeals.²² No such appeal was taken by any interested party.

The Federal CAFO Rule was reviewed by the Second Circuit Court of Appeals in *Waterkeeper Alliance, Inc v US EPA*.²³ The court, in the *Waterkeeper* opinion decided February 28, 2005, remanded certain portions of the Federal CAFO Rule to the USEPA for revision. While the USEPA did move quickly to commence rulemaking and meet the intent of *Waterkeeper*, only a proposed rule presently exists with the final Revised Federal Rule requiring state compliance yet to be issued. Once the Revised Federal Rule is finalized, Michigan (and the USEPA) will start the Section 123.62 revision cycle again whereby the state either demonstrates its ability to comply with minimum standards set forth in the revised rule, or commences a rulemaking that must be completed within one year.²⁴ For statutory modifications, states are allowed two years to comply with USEPA program revisions.²⁵ In the interim, the suspension of the federal permitting program remains in effect.

The Petitioners state on page 3 of their memorandum, in a purported Summary of Relevant Regulatory Scheme, that Michigan adopted the Federal CAFO Rule and, therefore, "must interpret its adopted NPDES regulation in conformance with federal case law affecting the implementation of the CWA." This statement is simply not true. The DEQ did adopt certain provisions of the CFR specific to CAFOs within its Part 21

²² 33 USC §1369(b); *Chesapeake Bay Foundation, Inc. v. United States*, 445 F. Supp 1349, 1354 (1978).

²³ *Waterkeeper Alliance, Inc v US EPA*, 399 F 3d 486 (2d Cir 2005)

²⁴ 40 CFR, Section 123.62(e)

²⁵ *Id.*

rules, Wastewater Discharge Permits, promulgated under Part 31 of the NREPA, by reference²⁶ and relies upon those rules as a promulgated part of Michigan's CAFO Rule. The adoption of certain sections of the CFR by reference by no means binds the state to federal court decisions or undercuts the state's ability to independently administer state law and rules. Nothing within the three sections of 40 CFR adopted by reference within Rule 2189 in any way impacts the legality and implementation of Rule 2196, the application of which forms the basis for the Petitioners' request.

Petitioners also inappropriately interpreted the DEQ's reference to one specific portion of the *Waterkeeper* opinion in a prior Declaratory Ruling,²⁷ also specific to CAFOs, as meaning that the DEQ is bound to the entire *Waterkeeper* opinion. This is obviously a faulty argument as a federal court opinion on a specific regulation promulgated under a federal law does not automatically diminish or otherwise modify rules independently and validly promulgated under the authority of a law of the state of Michigan. The prior Declaratory Ruling, issued on June 15, 2005,²⁸ did direct the DEQ, Water Bureau, to slightly modify its general permit for large CAFOs to better align the provisions of the permit with the *Waterkeeper* opinion. Those modifications were made with the sole intent of putting all effluent limitations in the permit in a specific section (the Nutrient Management Plan) to clarify that Michigan's NPDES program

²⁶ R 323.2189(a), (c), and (l)

²⁷ DEQ Declaratory Ruling Number 2005-01, as signed by Director Steven E. Chester on June 15, 2005.

²⁸ *Id.*

requirements were at least as stringent as required by federal law, and not as an obligation to the *Waterkeeper* opinion.²⁹

Michigan's Statutory and Rule Requirements for CAFOs

Michigan's Legislature has granted to the DEQ broad authority over the protection of water quality in the state within Part 31 of the NREPA; MCL 324.3101 *et seq.*:

The department shall protect and conserve the water resources of the state and shall have control of the pollution of surface or underground waters of the state and the Great Lakes, which are or may be affected by waste disposal of any person.³⁰

That broad authority includes protection of waters of the state from injury attributable to the acts of any person:

A person shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious to any of the following:

- (a) To the public health, safety, or welfare.
- (b) To domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such waters.
- (c) To the value or utility of riparian lands.
- (d) To livestock, wild animals, birds, fish, aquatic life, or plants or to the growth, propagation, or the growth or propagation thereof be prevented or injuriously affected; or whereby the value of fish and game is or may be destroyed or impaired.³¹

²⁹ Finally, on pages 4 and 5 of their Memorandum, the Petitioners attempt to make the case that Michigan's NPDES program is actually less stringent than federal law requires. The Petitioners claim that in requiring nondischarging CAFOs to obtain a permit to discharge, Michigan is actually less stringent than the federal baseline, presumably believing that the possession of a permit authorizes discharges that would otherwise not take place. Such a claim is made without any support whatsoever, is purely speculative, and requires no further discussion other than to reiterate that Michigan law must be, and is, at least as stringent as federal law. This fact is confirmed by the USEPA's unqualified approval of Michigan's CAFO Rule after publication of the *Waterkeeper* decision.

³⁰ MCL 324.3103(1), emphasis added

³¹ MCL 324.3109(1)

A person shall not discharge any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department.³²

The DEQ is granted additional discretion in making determinations on an activity's potential to adversely affect water quality in the state within Section 3106 of Part 31:

The department shall establish pollution standards for lakes, rivers, streams, and other waters of the state in relation to the public use to which they are or may be put, as it considers necessary. The department shall issue permits that will assure compliance with state standards to regulate municipal, industrial, and commercial discharges or storage of any substance that may affect the quality of the waters of the state. The department may set permit restrictions that will assure compliance with applicable federal law and regulations . . . The department may promulgate rules and issue orders restricting the polluting content of any waste material or polluting substance discharged or sought to be discharge into any lake, river, stream, or other waters of the state. The department shall take all appropriate steps to prevent any pollution the department considers to be unreasonable and against public interest in view of the existing conditions in any lake, river, stream, or other waters of the state.³³

This broad language points out a major, significant difference between the CWA and Part 31. The CWA only regulates *discharges* to navigable waters of the United States. This narrow focus is largely the basis for the *Waterkeeper* opinion which limited the USEPA to regulating actual discharges rather than potential discharges. Part 31 has no such limitations, and in fact, explicitly authorizes the DEQ to regulate activities that *may* affect waters of the state. Interestingly, even though the judges of the United States Second Circuit Court of Appeals in the *Waterkeeper* opinion found that the CWA did not authorize the USEPA to require potential dischargers to apply for permits, those judges did acknowledge that if the United States Congress amended

³² MCL 324.3112(1)

³³ MCL 324.3106, emphasis added

the CWA to require potential dischargers to apply for permits (similar to the authority already existing in Part 31), then the USEPA had presented persuasive evidence that the risk of water pollution from large CAFOs was so great that they could then be required to apply for permits.³⁴

Michigan's rules promulgated to implement the legislative intent of Part 31 define regulated discharges requiring permits as both direct discharges of agricultural waste³⁵ to waters of the state and indirect discharges to the ground.³⁶

A person discharging waste into the surface or groundwaters of the state or on the ground as a point source discharge, whether or not in compliance with an outstanding order of determination, final order of determination, or stipulation with the department, shall promptly make application for and obtain from the department a valid national or state permit pursuant to section 3112 of 3113 of part 31 of the act and according to procedures and deadlines set forth in these rules.³⁷

Point sources, as defined within the Part 21 rules promulgated pursuant to state law,³⁸ explicitly include CAFOs and do not exclude agricultural storm water discharges:

Point source discharge means a discharge that is released to the waters of the state by a discernible, confine, and discrete conveyance, including any of the following from which wastewater is or may be discharged:

- (i) A pipe.
- (ii) A ditch.
- (iii) A channel.
- (iv) A tunnel.
- (v) A conduit.
- (vi) A well.
- (vii) A discrete fissure.
- (viii) A container.

³⁴ *Waterkeeper*, FN 22

³⁵ Waste, as defined by both R 323.2104(aa) and R 323.2203(n), includes agricultural waste.

³⁶ R 323.2102(n) and R 323.2201(i)

³⁷ R 323.2106(1)

³⁸ 2005 ACS 323.2101 *et seq.*

(ix) A concentrated animal feeding operation.

(x) A vessel or other floating craft.

The term does not include a legally established county or intercounty drain, except for a county or intercounty drain that has a POTW designated as part of the drain or a discharge otherwise required to be authorized by a national permit.³⁹

The Part 21 rule is thus more expansive and protective than its federal counterpart,⁴⁰ consistent with the authorizing statute, Part 31. The CWA explicitly authorizes state programs to be more stringent than federal regulations.⁴¹

Large CAFOs are specifically required to apply for permits within Rule 2196, the subject of Petitioners' request.

- (1) CAFOs are point sources that require NPDES permits for discharge or potential discharge and require all of the following:
 - (a) If an operation becomes a CAFO, then the NPDES requirements for CAFOs apply to all animals in confinement at the operation and all production area waste and CAFO process wastewater generated by those animals or the production of those animals, regardless of the type of animal.
 - (b) All CAFO owners or operators shall apply either for an individual NPDES permit, or a certificate of coverage under an NPDES general permit, unless the owner or operator has received a determination from the department, made after providing notice and opportunity for public comment, that the CAFO has "no potential to discharge" pursuant to subrule (4) of this rule.⁴²

The Petitioners make vague claims that certain "farms do not have discharges, other than agricultural storm water discharges"; however, the DEQ's Water Bureau has expended a tremendous amount of resources investigating and documenting

³⁹ R 323.2104(c), emphasis added

⁴⁰ 33 USC §3162(14)

⁴¹ 40 CFR §123.1

⁴² R 323.2196(1)

discharges, including discharges other than agricultural storm water discharges, from numerous CAFOs. The copious amount of data collected by Water Bureau staff supports the DEQ's determination, reflected in Michigan's CAFO Rule, that the volume of agricultural waste produced, stored, and disposed of by large CAFOs presents a high risk of discharges to the waters of the state that would pose an unreasonable risk to public health and the environment.

Manure and other agricultural wastes produced by large CAFOs can have a beneficial use as soil amendments. However, there is also a substantial risk to waters of the state if agricultural wastes are over applied, applied without appropriate safeguards, or if unexpected meteorological events (i.e., a downpour during a sudden summer storm) occur during or after application of the waste. The DEQ has determined that the industry is--regardless of potential benefits--in many cases simply disposing of the agricultural waste by following the industry custom of land application or disposal.⁴³ By operating in this fashion, large CAFOs may, given the tremendous volumes of waste being disposed of, adversely affect waters of the state. In fact, the DEQ has documented many instances where land disposal of large CAFO waste has resulted in severe discharges of pollutants to waters of the state, including human disease-causing pathogens. The DEQ is obligated to recognize and address potential risks posed by the land disposal of large CAFO wastes. Large CAFOs are properly regulated through Michigan's NPDES permits to mitigate these clear risks.

⁴³ For the purposes of this Declaratory Ruling, the term "land disposal" will be used since land application is not defined by state regulation and land disposal better reflects the activity which the statute seeks to regulate.

The DEQ incorporated the "No Potential to Discharge"⁴⁴ provision into Michigan's CAFO Rule to provide an opportunity for large CAFOs to opt out of the permit requirement in recognition that some large CAFOs may operate in such a manner, or have implemented extraordinary measures, that demonstrate to the DEQ's satisfaction that the specific large CAFO does not pose a significant risk of a discharge and thus does not require a permit. However, as of the date of this Declaratory Ruling, not a single CAFO in the state of Michigan has adequately demonstrated No Potential to Discharge in accordance with Michigan's CAFO Rule. In fact, the first such facility that DEQ staff inspected to evaluate their potential to discharge was found to be discharging the day of the inspection.

The Petitioners in their request also raise a broader argument, founded upon an invalid section of Public Act 343 of 2006 (Act 343).⁴⁵ The Petitioners argue that Section 229 of Act 343 prohibits the DEQ from being more stringent than federal regulations (although elsewhere in the Petitioners' memorandum, as discussed above, the Petitioners argue that Michigan's NPDES program is less stringent than federal law). However, as pointed out by Governor Granholm in her veto message to the

⁴⁴ R 323.2196(4)

⁴⁵ Section 229 of 343, enrolled as Senate Bill 1086 and appropriating the DEQ's budget for the 2007 fiscal year, reads as follows: The department of environmental quality shall not expend funds to enforce administrative rules, policies, guidelines, or procedures that are more stringent than 40 CFR parts 9, 122, 123, and 412, as finally promulgated. The department shall not implement or enforce administrative rules, policies, guidelines, or procedures that do 1 or more of the following:

- (a) Require a farm to obtain a national pollution discharge elimination system permit under part 31 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3101 to 324.3133, if the farm has not been found by the department to have a regulated discharge of pollutants into waters of the state.
- (b) Require submission of field specific information beyond on-site access to the department.
- (c) Exceed the agricultural storm water exemption as defined in the clean water act, 33 USC 1251 to 1387.

Michigan Senate dated August 15, 2006 (Exhibit C), this provision is unenforceable as it attempts to amend the NREPA by reference. The Legislature's action in including the "boilerplate" provision, Section 229, violates longstanding principles of statutory construction.

CONCLUSION

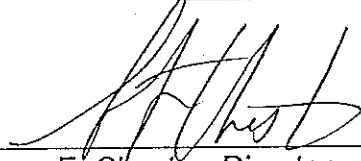
State law requires that all large CAFOs located within the state must obtain NPDES permits. When the revised Federal CAFO Rule is finally promulgated, the DEQ will evaluate whether Michigan's CAFO Rule requires revision to keep Michigan's NPDES program at least as stringent as federal requirements and thus maintain suspension of federal NPDES permitting in the state.

- The CWA expressly allows states with approved NPDES permitting programs to enact regulations more stringent than corresponding federal regulations. The Michigan NPDES program operates under the authority of state law and rules.
- Part 31 of the NREPA provides the DEQ with broad authority to protect waters of the state from potential injury resulting in a state permitting program that is indeed more stringent than the corresponding federal program. Michigan's CAFO Rule clearly requires all large CAFOs to apply for Michigan NPDES permits.

- Federal permitting under the CWA remains suspended so long as Michigan operates a permitting program at least as stringent as corresponding federal regulations.
- The USEPA has approved Michigan's CAFO Rule and has not reinstated federal permitting in the state.
- The Petitioners have not challenged the USEPA approval of Michigan's NPDES permitting program.

In accordance with Section 63 of the APA; MCL 24.263, this Declaratory Ruling is subject to judicial review in the same manner as a final agency decision or order in a contested case. As such, if the Petitioners wish to seek judicial review of this Declaratory Ruling, a petition is to be filed in the circuit court of Ingham County or other county where the petitioner resides or has a principal place of business.

Decreed on this 24 day of August 2007, by:



Steven E. Chester, Director
Department of Environmental Quality

Exhibit A

State CAFO Rules Stakeholder Workgroup

Name	Organization	Telephone	E-mail address
David Bertram	MI Township Association	517-321-6467	david@michigantownships.org
William Bickert	Michigan State University	517-353-8643	bickert@egr.msu.edu
Michael Bitondo	Michigan DEQ	517-335-3303	bitondom@michigan.gov
William Creal	Michigan DEQ	517-335-4114	crealw@michigan.gov
Tom Frazier	MI Township Association		tom@michigantownships.org
Kathleen Hawkins	MI Cattleman's Assoc.	517-347-8117	micattlemen@aol.com
Tom Hickson	Mich. Assoc. of Counties	517-372-5374	hickson@micounties.org
Sam Hines	MI Pork Producers Assoc.	517-699-2145	miporkasso@aol.com
George House	MI Allied Poultry Industries	616-676-5593	gehouse@comcast.net
Rita Jack	Sierra Club	517-484-2372	rita.jack@sierraclub.org
Steve Jann	U.S. EPA	312-886-2446	jann.stephen@epa.gov
Janet Kauffman	Michigan Enviro. Council		jkauffman@emich.edu
David Maturen	Mich. Assoc. of Counties		maturenappraisal@aol.com
Scott Piggott	Michigan Farm Bureau	517-323-7000	spiggot@mail.michfb.com
Vicki Pontz	MI Dept of Agriculture	517-335-3400	pontzv@michigan.gov
Alex Sagady	Sierra Club	517-332-6971	ajs@sagady.com
Mark Sears	MI Cattleman's Assoc.	517-563-2460	FAX – 517-563-2483
Gary Trimner	MI Milk Producers Assoc.	248-474-6672	trimner@mimilk.com
Megan Wheaton (Alt.)	Michigan Farm Bureau	517-323-7000	mwheato@michfb.com
Kevin Wickey	Nat. Resource Cons. Serv.	517-324-5279	Kevin.wickey@mi.usda.gov
Janice Wilford	MI Dept of Agriculture	517-241-4730	wilfordj9@michigan.gov
Anne Woiwode	Sierra Club	517-484-3108	anne.woiwode@sierraclub.org
Ronda Wuycheck	Michigan DEQ	517-241-7832	wuychecj@michigan.gov
Paul Zugger	MI United Conserv. Clubs		pzugger@pscinc.com

Mr. Tim McGuire
Michigan Association of Counties
935 N. Washington
Lansing, MI 48906

Ms. Janice Bobrin
Michigan Association of Drain
Commissioners
520 W. Ionia
Lansing, MI 48933

Mr. Sam Washington
Michigan United Conservation Clubs
2101 Wood Street
Lansing, MI 48912

Ms. Lana Pollack
Michigan Environmental Council
119 Pere Marquette
Lansing, MI 48912

Scott Piggott - primary
Mr. Wayne Woods
Michigan Farm Bureau
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Lansing, MI 48917

Mr. Sam Hines
Michigan Pork Producers Association
4801 Willoughby, Suite 5
Holt, MI 48842

Ms. Kathleen Hawkins
Michigan Cattleman's Association
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Okemos, MI 48864

Mr. George House
Executive Director
Michigan Allied Poultry Industries, Inc.
P.O. Box 242
Ada, MI 49301

Mr. David Bertram
Michigan Townships Association
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Lansing, MI 48908-0078

Vicki
Mr. Dan Wyant, Director
Michigan Department of Agriculture
Constitution Hall, 2nd FL, North Tower
525 W. Allegan
Lansing, MI 48933

Ms. Jo Lynn Traub, Director
Water Division
US Environmental Protection Agency
Region 5
77 West Jackson Boulevard (W-15J)
Chicago, IL 60604-3590

Mr. Gary Trimner
Member Services/Quality Control
Michigan Milk Producers Association
P.O. Box 8002
Novi, MI 48367

Mr. Kevin Wickey
JSDA, NRCS
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Director
Sierra Club Mackinac Chapter
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Lansing, MI 48906

Mr. William Bickert
Michigan State University
120A Farrall Hall
East Lansing, MI 48824

484-2372



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

September 2, 2003

Mr. Tim McGuire
Michigan Association of Counties
935 N. Washington
Lansing, MI 48906

Dear Mr. McGuire:

SUBJECT: State Concentrated Animal Feeding Operations (CAFOs) Rules

The United States Environmental Protection Agency promulgated final changes to the National Pollutant Discharge Elimination System regulation and Effluent Limitations Guidelines and Standards for CAFOs. The changes updated the 26-year old regulations, guidelines, and standards for CAFOs. The Michigan Department of Environmental Quality (MDEQ) has reviewed the final federal CAFO Rule and has determined that the MDEQ has adequate authority to implement the rule without additional statutory or regulatory authority. However, the MDEQ intends to develop rules to provide clarity to specific regulatory requirements that pertain to CAFOs. The new state CAFO Rule will capture the detail and substance of the federal CAFO Rule.

A critical aspect in developing state rules is public participation; therefore, I would like to invite you to participate in the CAFO Rule Development Work Group. I hope you agree to participate in this work group to assist in the development of a state CAFO Rule that will serve all interests. Our first meeting is scheduled for:

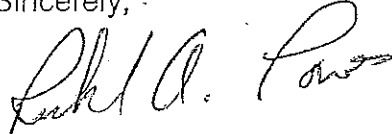
Wednesday, September 24, 2003
9:30 a.m. to 3:00 p.m.
William Ford Conference Room, 2nd Floor, South Tower, Constitution Hall
525 West Allegan Street
Lansing, Michigan 48933

We need to meet an ambitious schedule as our work in developing the draft rules needs to be concluded by December 5, 2003. I hope that you will agree to participate or will provide a representative to participate in the work group. Please contact Ms. Ronda Wuycheck, Water Division, at 517-241-7832 by September 12, 2003, to confirm

Mr. Tim McGuire
Page 2
September 2, 2003

your participation in the work group and to confirm your attendance at the September 24, 2003, meeting. You may contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Powers". The signature is fluid and cursive, with the first name "Richard" and last name "Powers" clearly distinguishable.

Richard A. Powers, Chief
Water Division
517-335-4176

cc: Ms. Ronda Wuycheck, MDEQ

Exhibit B



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 01 2005

REPLY TO THE ATTENTION OF:

WN-16J

Steven E. Chester, Director
Michigan Department of Environmental Quality
Post Office Box 30273
Lansing, Michigan 48909

Dear Mr. Chester:

I am writing with regard to Michigan's National Pollutant Discharge Elimination System (NPDES) program for concentrated animal feeding operations (CAFOs). Michigan recently revised this program by: (1) amending R 323.2102, R 323.2103, R 323.2104, R 323.2108, R 323.2109, and R 323.2189 of the *Michigan Administrative Code* (*Mich. Adm. Code*), (2) promulgating R 323.2196, *Mich. Adm. Code*, as a new rule, and (3) establishing technical standards for nutrient management. The Michigan technical standards appear in R 323.2196(5)(a)(ix), *Mich. Adm. Code*; in Part I. B. i. 2) and 3) of NPDES general permit number MIG010000 issued on June 11, 2004; and as enclosure to an April 22, 2005, letter from Mr. Richard Powers to Ms. Jo Lynn Traub of this office. Of the six states in the United States Environmental Protection Agency (USEPA), Region 5, Michigan was the second to revise its program in order to administer the 2003 changes to the Clean Water Act regulations for CAFOs. We appreciate the effort that Michigan expended to complete this key action.

USEPA, Region 5, has reviewed the Michigan-revised program. We conducted the review under 40 CFR § 123.62. With this letter, I am pleased to inform you that we approve the revision.

On February 28, 2005, the United States Court of Appeals for the Second Circuit vacated provisions of the federal regulations which allow permit authorities to issue permits to CAFOs without including the terms of nutrient management plans in the permits, without reviewing plans, and with plans remaining at the CAFO and thus unavailable to the public (*see Waterkeeper Alliance, et al., v. USEPA* (No. 03-4470 (L))). USEPA, Region 5, has evaluated R 323.2196(5)(b), *Mich. Adm. Code*, in the context of the *Waterkeeper* decision. This rule provides that, "[a] copy of the CAFO's [Comprehensive Nutrient Management Plan] shall be maintained at the CAFO and made available to the department upon request. In addition, the executive summary shall be submitted to the department." We find that the rule will not prevent the State from administering its program consistent with the *Waterkeeper* decision. The rule is therefore included within the scope of the approval communicated above. We understand that the State will administer its program consistent with the decision with respect to nutrient management plans.

Thank you for your ongoing efforts to protect water quality from CAFO process wastewater and production area waste while sustaining animal agriculture in the Great Lakes State.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Bharat Mathur', with a long horizontal stroke extending to the right.

Bharat Mathur
Acting Regional Administrator

cc: Mr. Richard Powers, MDEQ

WATER BUREAU

JUL 8 - 2005

EXECUTIVE

Exhibit C



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING
August 15, 2006

JOHN D. CHERRY, JR.
LT. GOVERNOR

Michigan Senate
State Capitol Building
Lansing, MI 48933

Ladies and Gentlemen:

Today I have signed Enrolled Senate Bill 1086, which provides \$444.2 million to support the fiscal year 2007 operations of the Department of Environmental Quality. I am, however, returning it to you because of four items of which I disapprove, pursuant to Article V, section 19, of the Michigan Constitution. The specific vetoes are contained in the attached copy of the bill, which has been filed with the Secretary of State.

My action today completes the fiscal year 2007 budget for the Department of Environmental Quality and supports critical environmental programs including \$40 million for strategic water quality programs; over \$21 million for the environmental cleanup and redevelopment program; almost \$9 million for Brownfield grants and loans; and \$605,000 to implement the recently enacted water withdrawal statutes.

My action today also vetoes four items with which I do not concur. I have vetoed funding for a grant to Michigan legislative council for an environmental ombudsman as this funding is intended for a service to be provided by the Legislative Branch but paid for by an Executive Branch agency.

I have vetoed funding for Little Black Creek and Muskegon County, including boilerplate section 1104, as these special interest projects should be considered through the regular remediation and redevelopment grant process.

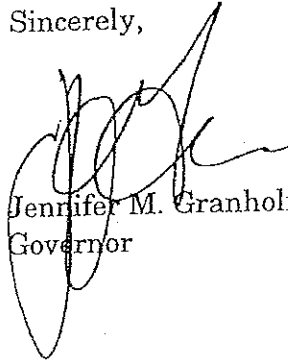
I have vetoed boilerplate section 222, which provides funding for a consultant to benchmark the permitting programs. Significant improvements have been made by the Department of Environmental Quality over the past few years to reduce air quality permit processing times, and to streamline the National Pollution Discharge Elimination System permit process. These successes were achieved through partnerships with industry, public utilities, the federal government, and through examination of best practices in other states. Efforts are also underway to expand these process improvements to other areas of the Department's land and water permit programs. Scarce state resources would be better utilized to build on these successes and continue efforts to reduce the time required to issue permits.

Michigan Senate
August 15, 2006
Page 2

Finally, boilerplate sections 229 and 801 are legally unenforceable, as they attempt to amend Public Act 451 of 1994 by reference.

This bill supports the essential operations of the Department of Environmental Quality and I thank the Legislature for its cooperation in finalizing the fiscal year 2007 budget.

Sincerely,



Jennifer M. Granholm
Governor

cc: Michigan House of Representatives
The Honorable Terri Lynn Land

STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006

Introduced by Senators Barcia and Emerson

ENROLLED SENATE BILL No. 1086

AN ACT to make appropriations for the department of environmental quality for the fiscal year ending September 30, 2007; to provide for the expenditure of those appropriations; to create certain funds and accounts; to require certain reports; to prescribe the powers and duties of certain state agencies and officials; to authorize certain transfers by certain state agencies; and to provide for the disposition of fees and other income received by the various state agencies.

The People of the State of Michigan enact:

PART 1

LINE-ITEM APPROPRIATIONS

Sec. 101. Subject to the conditions set forth in this act, the amounts listed in this part are appropriated for the department of environmental quality for the fiscal year ending September 30, 2007, from the funds indicated in this part. The following is a summary of the appropriations in this part:

DEPARTMENT OF ENVIRONMENTAL QUALITY
APPROPRIATIONS SUMMARY:

Full-time equated unclassified positions	6.0	
Full-time equated classified positions	1,561.7	
GROSS APPROPRIATION	\$	444,229,500
Interdepartmental grant revenues:		
Total interdepartmental grants and intradepartmental transfers		18,233,600
ADJUSTED GROSS APPROPRIATION	\$	425,995,900
Federal revenues:		
Total federal revenues		140,338,500
Special revenue funds:		
Total local revenues		0
Total private revenues		450,000
Total other state restricted revenues		251,379,000
State general fund/general purpose	\$	33,823,400

For Fiscal Year
Ending Sept. 30,
2007

FUND SOURCE SUMMARY:

Full-time equated unclassified positions	6.0	
Full-time equated classified positions	1,561.7	
GROSS APPROPRIATION		\$ 444,229,500
Interdepartmental grant revenues:		
IDG-MDCH, local public health operations		10,472,500
IDG-MDSP		719,800
IDG, Michigan transportation fund		1,020,800
IDT, interdivisional charges		2,053,400
IDT, laboratory services		3,967,100
Total interdepartmental grants and intradepartmental transfers		18,233,600
ADJUSTED GROSS APPROPRIATION		\$ 425,995,900
Federal revenues:		
DHHS, federal		6,100
DHS, federal		2,922,700
DOC-NOAA, federal		3,577,000
DOD, federal		1,091,800
DOI, federal		584,500
EPA, brownfield cleanup revolving loan fund		1,000,000
EPA, multiple		131,156,400
Total federal revenues		140,338,500
Special revenue funds:		
Private funds		450,000
Total private revenues		450,000
Aboveground storage tank fees		733,700
Air emissions fees		12,197,800
Aquifer protection revolving fund		400,000
Campground fund		230,700
Clean Michigan initiative - administration		1,111,700
Clean Michigan initiative - clean water fund		3,276,900
Clean Michigan initiative - pollution prevention activities		100,000
Clean Michigan initiative - response activities		14,411,000
Cleanup and redevelopment fund		11,192,300
Community pollution prevention fund		250,000
Environmental pollution prevention fund		1,965,700
Environmental protection bond fund		15,500,000
Environmental protection fund		5,780,400
Environmental response fund		9,647,600
Fees and collections		533,400
Financial instruments		5,000,000
Great Lakes protection fund		2,563,200
Groundwater discharge permit fees		1,912,300
Hazardous materials transportation permit fund		211,200
Laboratory data quality recognition fund		15,700
Land and water permit fees		2,364,800
Landfill maintenance trust fund		54,000
Medical waste emergency response fund		230,400
Metallic mining surveillance fee revenue		91,000
Mineral well regulatory fee revenue		238,000
Nonferrous metallic mineral surveillance		210,500
NPDES fees		3,238,300
Oil and gas regulatory fund		7,582,000
Orphan well fund		2,041,200
Public swimming pool fund		525,300
Public utility assessments		777,600
Public water supply fees		3,873,800
Publication revenue		116,400
Refined petroleum fund		30,272,100

For Fiscal Year
Ending Sept. 30,
2007

Restricted funds.....	\$ 17,787,800
Retired engineers technical assistance fund.....	1,474,300
Revolving loan revenue bonds.....	11,400,000
Saginaw Bay and River restoration revenue.....	169,900
Sand extraction fee revenue.....	196,300
Scrap tire regulatory fund.....	5,797,400
Septage waste contingency fund.....	36,600
Septage waste license fees.....	1,835,800
Settlement funds.....	2,037,000
Sewage sludge land application fee.....	823,700
Small business pollution prevention revolving loan fund.....	104,000
Soil erosion and sedimentation control training fund.....	111,400
Solid waste program fees.....	4,322,000
Stormwater permit fees.....	2,720,800
Strategic water quality initiatives fund.....	50,015,300
Underground storage tank fees.....	3,028,200
Waste reduction fee revenue.....	4,241,500
Wastewater operator training fees.....	168,100
Water analysis fees.....	3,214,100
Water pollution control revolving fund.....	2,982,400
Water quality protection fund.....	25,000
Water use reporting fees.....	238,400
Total other state restricted revenues.....	251,379,000
State general fund/general purpose.....	\$ 33,828,400

Sec. 102. EXECUTIVE OPERATIONS AND DEPARTMENT SUPPORT

Full-time equated unclassified positions.....	6.0
Full-time equated classified positions.....	78.0
Unclassified salaries—6.0 FTE positions.....	\$ 482,600
Administrative hearings.....	422,600
Automated data processing.....	2,053,400
Central operations—62.0 FTE positions.....	6,660,400
Environmental support projects.....	5,000,000
Executive direction—9.0 FTE positions.....	2,171,600
Human resource optimization user charges.....	96,000
Office of the Great Lakes—7.0 FTE positions.....	973,700
Grant to Michigan legislative council for environmental ombudsman.....	200,000 <i>may</i>
Building occupancy charges.....	7,910,000
Rent - privately owned property.....	2,066,900
GROSS APPROPRIATION.....	\$ 28,037,200
Appropriated from:	
Interdepartmental grant revenues:	
IDT, interdivisional charges.....	2,053,400
IDT, laboratory services.....	499,900
Federal revenues:	
DOI, federal.....	155,400
EPA, multiple.....	268,600
Special revenue funds:	
Environmental protection fund.....	200,000
Financial instruments.....	5,000,000
Great Lakes protection fund.....	563,200
Restricted funds.....	13,476,900
Settlement funds.....	101,200
State general fund/general purpose.....	\$ 5,718,600

Sec. 103. AIR QUALITY

Full-time equated classified positions.....	241.5
Air quality programs—241.5 FTE positions.....	\$ 23,998,500
GROSS APPROPRIATION.....	\$ 23,998,500

For Fiscal Year
Ending Sept. 30,
2007

Appropriated from:

Federal revenues:

DHS, federal.....	\$	1,400,000
EPA, multiple.....		4,358,900

Special revenue funds:

Air emissions fees.....		11,459,100
Environmental response fund.....		102,400
Fees and collections.....		393,600
Oil and gas regulatory fund.....		103,600
Refined petroleum fund.....		2,747,500
State general fund/general purpose.....	\$	3,433,400

Sec. 104. ENVIRONMENTAL SCIENCE AND SERVICES

Full-time equated classified positions.....184.0

Program services and grant management—27.5 FTE positions.....	\$	3,352,700
Laboratory services—68.0 FTE positions.....		6,609,600
Municipal assistance—35.5 FTE positions.....		5,227,800
Pollution prevention and technical assistance—53.0 FTE positions.....		5,110,800
Pollution prevention outreach.....		300,000
Retired engineers technical assistance program.....		1,474,300
Revitalization revolving loan program.....		1,000,000
Brownfield grants and loans program.....		8,811,000
GROSS APPROPRIATION.....	\$	31,886,200

Appropriated from:

Interdepartmental grant revenues:

IDT, laboratory services.....		3,467,200
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Federal revenues:

DOC-NOAA, federal.....		343,600
EPA, brownfield cleanup revolving loan fund.....		1,000,000
EPA, multiple.....		3,344,000

Special revenue funds:

Private funds.....		300,000
Air emissions fees.....		738,700
Clean Michigan initiative - administration.....		169,600
Clean Michigan initiative - response activities.....		8,811,000
Environmental protection fund.....		66,600
Environmental response fund.....		644,800
Laboratory data quality recognition fund.....		15,700
Public water supply fees.....		244,200
Retired engineers technical assistance fund.....		1,474,300
Settlement funds.....		227,400
Small business pollution prevention revolving loan fund.....		104,000
Stormwater permit fees.....		93,200
Strategic water quality initiatives fund.....		215,300
Waste reduction fee revenue.....		4,169,700
Wastewater operator training fees.....		168,100
Water analysis fees.....		3,214,100
Water pollution control revolving fund.....		2,333,100
State general fund/general purpose.....	\$	741,600

Sec. 105. OFFICE OF GEOLOGICAL SURVEY

Full-time equated classified positions.....68.0

Coal and sand dune management—3.0 FTE positions.....	\$	619,600
Metallic mine reclamation—1.0 FTE position.....		91,000
Mineral wells management—3.0 FTE positions.....		238,000
Nonferrous metallic mining—2.0 FTE positions.....		210,500
Orphan well—2.0 FTE positions.....		2,041,200
Services to oil and gas—57.0 FTE positions.....		7,243,500
GROSS APPROPRIATION.....	\$	10,443,800

For Fiscal Year
Ending Sept. 30,
2007

Appropriated from:
Federal revenues:
DOI, federal..... \$ 423,300
Special revenue funds:
Metallic mining surveillance fee revenue..... 91,000
Mineral well regulatory fee revenue..... 238,000
Nonferrous metallic mineral surveillance..... 210,500
Oil and gas regulatory fund..... 7,127,100
Orphan well fund..... 2,041,200
Publication revenue..... 116,400
Sand extraction fee revenue..... 196,300
State general fund/general purpose..... \$ 0

Sec. 106. LAND AND WATER MANAGEMENT

Full-time equated classified positions.....129.0
Program direction—8.0 FTE positions..... \$ 904,500
Field permitting and project assistance—72.0 FTE positions..... 7,221,000
Great Lakes shorelands—28.0 FTE positions..... 2,559,000
Water management—21.0 FTE positions..... 2,618,800
GROSS APPROPRIATION..... \$ 13,303,300

Appropriated from:
Interdepartmental grant revenues:
IDG, Michigan transportation fund..... 968,000
Federal revenues:
DHS, federal..... 966,400
DOC-NOAA, federal..... 1,450,100
EPA, multiple..... 1,007,500
Special revenue funds:
Environmental protection fund..... 1,613,800
Land and water permit fees..... 1,897,400
State general fund/general purpose..... \$ 5,400,100

Sec. 107. REMEDIATION AND REDEVELOPMENT

Full-time equated classified positions.....297.5
Contaminated site investigation, cleanup, and revitalization—230.5 FTE positions..... \$ 22,471,700
Federal cleanup project management—67.0 FTE positions..... 8,139,700
Emergency cleanup actions..... 4,000,000
Refined petroleum product cleanup program..... 22,000,000
Environmental cleanup and redevelopment program..... 21,100,000
State cleanup 451..... 2,500,000
Superfund cleanup..... 4,000,000
~~Little Black Creek..... 35,000~~
* City of St. Louis water supply wells..... 300,000
* City of St. Clair Shores - Lange-Revere canals..... 500,000
GROSS APPROPRIATION..... \$ 85,046,400

Appropriated from:
Federal revenues:
DHHS, federal..... 6,100
DOD, federal..... 1,081,900
EPA, multiple..... 8,403,500
Special revenue funds:
Private funds..... 150,000
Clean Michigan initiative - administration..... 351,600
Clean Michigan initiative - response activities..... 5,600,000
Cleanup and redevelopment fund..... 11,192,300
Environmental protection bond fund..... 15,500,000
Environmental protection fund..... 3,700,000
Environmental response fund..... 8,609,900

For Fiscal Year
Ending Sept. 30,
2007

Landfill maintenance trust fund	\$	54,000
Refined petroleum fund		26,600,700
Settlement funds		1,458,400
State general fund/general purpose	\$	2,338,000

Sec. 108. WASTE AND HAZARDOUS MATERIALS

Full-time equated classified positions	183.5	
Aboveground storage tank program—8.0 FTE positions	\$	733,700
Hazardous waste management program—61.0 FTE positions		6,249,200
Low-level radioactive waste authority—2.0 FTE positions		777,600
Medical waste program		230,400
Radiological protection program—16.5 FTE positions		1,383,600
Scrap tire regulatory program—11.0 FTE positions		1,021,800
Solid waste management program—50.0 FTE positions		4,393,800
Underground storage tank program—35.0 FTE positions		3,288,900
GROSS APPROPRIATION	\$	18,079,000

Appropriated from:

Interdepartmental grant revenues:

IDG-MDSP	719,800
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Federal revenues:

EPA, multiple	3,875,800
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Special revenue funds:

Aboveground storage tank fees	733,700
Environmental pollution prevention fund	1,965,700
Hazardous materials transportation permit fund	211,200
Medical waste emergency response fund	230,400
Public utility assessments	777,600
Scrap tire regulatory fund	1,021,800
Solid waste program fees	4,322,000
Underground storage tank fees	3,028,200
Waste reduction fee revenue	71,800
State general fund/general purpose	\$ 1,121,000

Sec. 109. WATER

Full-time equated classified positions	358.2	
Aquifer protection program	\$	350,000
Aquifer protection and dispute resolution - IDG to Michigan department of agriculture		50,000
Drinking water and environmental health—114.2 FTE positions		16,463,100
Fish contaminant monitoring		316,100
Groundwater discharge—22.0 FTE positions		2,048,300
NPDES nonstormwater program—121.4 FTE positions		10,578,900
Sewage sludge land application program—6.5 FTE positions		823,700
Surface water—94.1 FTE positions		15,083,900
GROSS APPROPRIATION	\$	45,714,000

Appropriated from:

Federal revenues:

EPA, multiple	19,030,200
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Special revenue funds:

Aquifer protection revolving fund	400,000
Campground fund	230,700
Clean Michigan initiative - administration	590,500
Clean Michigan initiative - clean water fund	3,276,900
Environmental response fund	162,400
Fees and collections	139,800
Groundwater discharge permit fees	1,912,300
Land and water permit fees	467,400
NPDES fees	3,238,300

For Fiscal Year
Ending Sept. 30,
2007

Public swimming pool fund.....	\$	525,300
Public water supply fees.....		2,229,600
Refined petroleum fund.....		840,200
Saginaw Bay and River restoration revenue.....		169,900
Septage waste contingency fund.....		36,600
Septage waste license fees.....		310,800
Sewage sludge land application fee.....		823,700
Soil erosion and sedimentation control training fund.....		111,400
Stormwater permit fees.....		2,627,600
Water pollution control revolving fund.....		649,300
Water use reporting fees.....		238,400
State general fund/general purpose.....	\$	7,702,700

Sec. 110. CRIMINAL INVESTIGATIONS

Full-time equated classified positions.....	22.0	
Environmental investigations—22.0 FTE positions.....	\$	2,504,600
GROSS APPROPRIATION.....	\$	2,504,600

Appropriated from:

Federal revenues:

DHS, federal.....	539,000
EPA, multiple.....	149,000

Special revenue funds:

Environmental response fund.....	128,100
Oil and gas regulatory fund.....	351,300
Scrap tire regulatory fund.....	275,600
State general fund/general purpose.....	\$ 1,061,600

Sec. 111. GRANTS

Coastal management grants.....	\$	2,000,000
Federal - Great Lakes remedial action plan grants.....		700,000
Federal - nonpoint source water pollution grants.....		6,500,000
Grants to counties - air pollution.....		83,700
Radon grants.....		90,000
Water pollution control and drinking water revolving fund.....		97,179,900
Drinking water program grants..... <i>name change</i>		1,330,000
Great Lakes research and protection grants.....		2,000,000
Household hazardous waste collection program.....		100,000
Local health department operations.....		10,472,500
Muskegon County.....		200,000
Noncommunity water grants.....		1,400,000
Pollution prevention local grants.....		250,000
Real-time water quality monitoring.....		250,000
Septage waste compliance grants.....		1,525,000
Scrap tire grants.....		4,500,000
Strategic water quality initiative loans.....		9,800,000
Strategic water quality initiative grants.....		40,000,000
Volunteer river, stream, and creek cleanup.....		25,000
GROSS APPROPRIATION.....	\$	178,406,100

Appropriated from:

Interdepartmental grant revenues:

IDG-MDCH, local public health operations.....	10,472,500
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Federal revenues:

DOC-NOAA, federal.....	1,700,000
EPA, multiple.....	88,920,000

Special revenue funds:

Clean Michigan initiative - pollution prevention activities.....	100,000
Community pollution prevention fund.....	250,000
Environmental protection fund.....	200,000

For Fiscal Year
Ending Sept. 30,
2007

Great Lakes protection fund	\$ 2,000,000
Public water supply fees	1,400,000
Refined petroleum fund	83,700
Revolving loan revenue bonds	11,400,000
Scrap tire regulatory fund	4,500,000
Septage waste license fees	1,525,000
Settlement funds	250,000
Strategic water quality initiatives fund	49,800,000
Water quality protection fund	25,000
State general fund/general purpose	\$ 5,779,900

Sec. 112. INFORMATION TECHNOLOGY

Information technology services and projects	\$ 6,810,400
GROSS APPROPRIATION	\$ 6,810,400

Appropriated from:

Interdepartmental grant revenues:

IDG, Michigan transportation fund	52,800
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Federal revenues:

DHS, federal	17,300
DOC-NOAA, federal	83,300
DOD, federal	9,900
DOI, federal	5,800
EPA, multiple	1,798,900

Special revenue funds:

Restricted funds	4,310,900
State general fund/general purpose	\$ 531,500

PART 2

PROVISIONS CONCERNING APPROPRIATIONS

GENERAL SECTIONS

Sec. 201. Pursuant to section 30 of article IX of the state constitution of 1963, total state spending from state resources under part 1 for fiscal year 2006-2007 is \$285,207,400.00 and state spending from state resources to be paid to local units of government for fiscal year 2006-2007 is \$5,958,700.00. The itemized statement below identifies appropriations from which spending to local units of government will occur:

DEPARTMENT OF ENVIRONMENTAL QUALITY REMEDATION AND REDEVELOPMENT

City of St. Louis water supply wells	\$ 300,000
City of St. Clair Shores - Lange-Revere canals	500,000

WASTE AND HAZARDOUS MATERIALS

Radiological protection program	\$ 25,000
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GRANTS

Household hazardous waste collection program	\$ 100,000
Grants to counties - air pollution	83,700
Muskegon County	200,000
Noncommunity water grants	1,400,000
Real-time water quality monitoring	250,000
Scrap tire grants	1,575,000
Septage waste compliance program	1,525,000
TOTAL	\$ 5,958,700

Sec. 202. The appropriations authorized under this act are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

Sec. 203. As used in this act:

- (a) "Department" means the department of environmental quality.
- (b) "DHHS" means the United States department of health and human services.
- (c) "DHS" means the United States department of homeland security.
- (d) "DOC" means the United States department of commerce.
- (e) "DOC-NOAA" means the DOC national oceanic and atmospheric administration.
- (f) "DOD" means the United States department of defense.
- (g) "DOI" means the United States department of interior.
- (h) "EPA" means the United States environmental protection agency.
- (i) "FTE" means full-time equated.
- (j) "IDG" means interdepartmental grant.
- (k) "IDT" means intradepartmental transfer.
- (l) "MDCH" means the Michigan department of community health.
- (m) "MDSP" means the Michigan department of state police.
- (n) "MI" means Michigan.
- (o) "NPDES" means national pollutant discharge elimination system.

Sec. 204. The department of civil service shall bill departments and agencies at the end of the first fiscal quarter for the 1% charge authorized by section 5 of article XI of the state constitution of 1963. Payments shall be made for the total amount of the billing by the end of the second fiscal quarter.

Sec. 205. (1) A hiring freeze is imposed on the state classified civil service. State departments and agencies are prohibited from hiring any new full-time state classified civil service employees and prohibited from filling any vacant state classified civil service positions. This hiring freeze does not apply to internal transfers of classified employees from 1 position to another within a department.

(2) The state budget director shall grant exceptions to the hiring freeze described in subsection (1) when the state budget director believes that the hiring freeze will result in rendering a state department or agency unable to deliver basic services, cause a loss of revenue to the state, result in the inability of the state to receive federal funds, or would necessitate additional expenditures that exceed any savings from maintaining a vacancy. The state budget director shall report quarterly to the chairpersons of the senate and house of representatives standing committees on appropriations the number of exceptions to the hiring freeze approved during the previous quarter and the reasons to justify the exception.

Sec. 206. The department shall use the Internet to fulfill the reporting requirements of this act. This may include transmission of reports via electronic mail to the recipients identified for each reporting requirement or it may include placement of reports on an Internet or Intranet site.

Sec. 207. The departments and state agencies receiving appropriations under this act shall receive and retain copies of all reports funded from appropriations in part 1. These departments and state agencies shall follow federal and state guidelines for short-term and long-term retention of these reports. To the extent consistent with federal and state guidelines, the requirements of this section are satisfied if the reports funded from appropriations in part 1 are retained in electronic format.

Sec. 208. By February 15, 2007, the department shall provide the state budget director, the subcommittees on environmental quality of the senate and house appropriations committees, and the senate and house fiscal agencies with an annual report on restricted fund balances, projected revenues, and expenditures for the fiscal years ending September 30, 2006 and September 30, 2007.

Sec. 209. (1) From funds appropriated under part 1, the department shall prepare a report that lists all of the following regarding grant or loan or grant and loan programs administered by the department for the fiscal year ending September 30, 2007:

- (a) The name of each program.

(b) The goals of the program, the criteria, eligibility, process, filing fees, nominating procedures, and deadlines for each program.

(c) The maximum and minimum grant and loan available and whether there is a match requirement for each program.

(d) The amount of any required match, and whether in-kind contributions may be used as part or all of a required match.

(e) Information pertaining to the application process, timeline for each program, and the contact people within the department.

(f) The source of funds for each program, including the citation of pertinent authorizing acts.

(g) Information regarding plans for the next fiscal year for the phaseout, expansion, or changes for each program.

(h) A listing of all recipients of grants or loans awarded by the department by type and amount of grant or loan.

(2) The reports required under this section shall be submitted to the state budget office, the senate and house appropriations committees, and senate and house fiscal agencies by January 1, 2007.

Sec. 210. The department shall notify the legislature and shall provide a public meeting and public comment opportunity with respect to any request received by the state of Michigan to divert water from the Great Lakes pursuant to the water resources development act of 1986, Public Law 99-662, 100 Stat. 4082.

Sec. 211. (1) The department shall report all of the following information relative to allocations made from appropriations for the environmental cleanup and redevelopment program, state cleanup, emergency actions, superfund cleanup, the revitalization revolving loan program, the brownfield grants and loans program, the leaking underground storage tank cleanup program, the contaminated lake and river sediments cleanup program, the refined petroleum product cleanup program, and the environmental protection bond projects under section 19508(7) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.19508, to the state budget director, the senate and house appropriations subcommittees on environmental quality, and the senate and house fiscal agencies:

(a) The name and location of the site for which an allocation is made.

(b) The nature of the problem encountered at the site.

(c) A brief description of how the problem will be resolved if the allocation is made for a response activity.

(d) The estimated date that site closure activities will be completed.

(e) The amount of the allocation, or the anticipated financing for the site.

(f) A summary of the sites and the total amount of funds expended at the sites at the conclusion of the fiscal year.

(g) The number of sites that would qualify as brownfields that were redeveloped.

(2) The report prepared under subsection (1) shall also include all of the following:

(a) The status of all state-owned facilities that are on the list compiled under part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142.

(b) The report shall include the total amount of funds expended during the fiscal year and the total amount of funds awaiting expenditure.

(c) The total amount of bonds issued for the environmental protection bond program pursuant to part 193 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.19301 to 324.19306, and bonds issued pursuant to the clean Michigan initiative act, 1998 PA 284, MCL 324.95101 to 324.95108.

(3) The report shall be made available by March 31 of each year.

Sec. 212. (1) The department of environmental quality is authorized to expend amounts remaining from the current and prior fiscal year appropriations to meet funding needs of legislatively approved sites for the environmental cleanup and redevelopment program and the leaking underground storage tank cleanup program.

(2) Unexpended and unencumbered amounts remaining from appropriations from the environmental protection bond fund contained in 2003 PA 173 are appropriated for expenditure for any site listed in this act and any site listed in the public acts referenced in this section.

(3) Unexpended and unencumbered amounts remaining from appropriations from the cleanup and redevelopment fund and unclaimed bottle deposits fund contained in 2003 PA 171, 2003 PA 173, 2003 PA 237, and 2004 PA 350 are appropriated for expenditure for any site listed in this act and any site listed in the public acts referenced in this section.

(4) Unexpended and unencumbered amounts remaining from appropriations from the clean Michigan initiative fund - response activities contained in 2000 PA 52, 2001 PA 120, 2003 PA 173, 2003 PA 237, 2004 PA 309, 2004 PA 350, and 2005 PA 11 are appropriated for expenditure for any site listed in this act and any site listed in the public acts referenced in this section.

(5) Unexpended and unencumbered amounts remaining from appropriations from the environmental protection fund contained in 2001 PA 43, 2002 PA 520, 2003 PA 171, and 2004 PA 350 are appropriated for expenditure for any site listed in this act and any site listed in the public acts referenced in this section.

(6) Unexpended and unencumbered amounts remaining from appropriations from the refined petroleum fund activities contained in 2005 PA 154 are appropriated for expenditure for any site listed in this act and any site listed in the public acts referenced in this section.

Sec. 213. Of the money appropriated from the environmental education fund in part 1, \$5,000.00 shall be allocated to Michigan State University Extension Service - 4-H Youth Programs to fund the Michigan Youth Conservation Council.

Sec. 214. From the funds appropriated in part 1 for information technology, departments and agencies shall pay user fees to the department of information technology for technology-related services and projects. These user fees shall be subject to provisions of an interagency agreement between the department and the department of information technology.

Sec. 215. Amounts appropriated in part 1 for information technology may be designated as work projects and carried forward to support department of environmental quality technology projects under the direction of the department of information technology. Funds designated in this manner are not available for expenditure until approved as work projects under section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a.

Sec. 216. (1) Due to the current budgetary problems in this state, out-of-state travel for the fiscal year ending September 30, 2007 shall be limited to situations in which 1 or more of the following conditions apply:

(a) The travel is required by legal mandate or court order or for law enforcement purposes.

(b) The travel is necessary to protect the health or safety of Michigan citizens or visitors or to assist other states in similar circumstances.

(c) The travel is necessary to produce budgetary savings or to increase state revenues, including protecting existing federal funds or securing additional federal funds.

(d) The travel is necessary to comply with federal requirements.

(e) The travel is necessary to secure specialized training for staff that is not available within this state.

(f) The travel is financed entirely by federal or nonstate funds.

(2) If out-of-state travel is necessary but does not meet 1 or more of the conditions in subsection (1), the state budget director may grant an exception to allow the travel. Any exceptions granted by the state budget director shall be reported on a monthly basis to the house and senate appropriations committees.

(3) Not later than January 1 of each year, each department shall prepare a travel report listing all travel by classified and unclassified employees outside this state in the immediately preceding fiscal year that was funded in whole or in part with funds appropriated in the department's budget. The report shall be submitted to the chairs and members of the house and senate appropriations committees, the house and senate fiscal agencies, and the state budget director. The report shall include the following information:

(a) The name of each person receiving reimbursement for travel outside this state or whose travel costs were paid by this state.

(b) The destination of each travel occurrence.


(c) The dates of each travel occurrence.

(d) A brief statement of the reason for each travel occurrence.

(e) The transportation and related costs of each travel occurrence, including the proportion funded with state general fund/general purpose revenues, the proportion funded with state-restricted revenues, the proportion funded with federal revenues, and the proportion funded with other revenues.

(f) A total of all out-of-state travel funded for the immediately preceding fiscal year.

Sec. 217. Funds appropriated in part 1 shall not be used for the purchase of foreign goods or services, or both, if competitively priced and comparable quality American goods or services, or both, are available. Preference should be given to goods or services, or both, manufactured or provided by Michigan businesses if they are competitively priced and of comparable quality.

 Sec. 218. The department shall collaborate with the statewide public advisory council, local advisory councils, the United States environmental protection agency, and other appropriate federal agencies, the department of natural resources, and other appropriate parties to develop a long-term strategy to restore and formally remove Michigan's Great Lakes areas of concern from the federal listing. Among other information, the strategy should include a list of

cleanup, source control, monitoring, and assessment activities eligible for funding under the federal Great Lakes legacy act; their estimated cost; options for meeting any nonfederal funding match requirements for these activities, including recommendations for changes to existing appropriations and program expenditures to qualify as matching funds for federal grant programs; a description of the optimum staffing level for the areas of concern program and available funding options; and a description of the department's role in seeking the formal removal of areas of concern, or specific beneficial use impairments, from the federal list, including minimum cleanup goals for identified impairments based on applicable state and federal regulatory standards and the monitoring programs available for assessing progress in achieving those goals. In addition, the department shall strive to apply for an equitable share of federal funding and technical assistance available to support the area of concern program and strive to provide the funds needed to meet nonfederal funding requirements.

Sec. 219. The department shall not take disciplinary action against an employee for communicating with a member of the legislature or his or her staff.

Sec. 220. The department shall annually report to the state budget director, the senate and house appropriations committees, and the senate and house fiscal agencies an accounting of all civil and criminal fine revenue collected during the year.

Sec. 221. Unexpended settlement revenues at the end of the fiscal year may be carried forward into the settlement fund in the succeeding fiscal year up to a maximum carryforward of \$2,500,000.00.

~~Sec. 222. From the funds appropriated in part 1, the department shall expend not more than \$50,000.00 to hire a consulting firm to complete a benchmark study on the air permit, NPDES, and wetland permit programs. This study shall include a calculation of the department's per permit cost to process the permits, a listing of the timeliness of the process from receipt of permit application to award or denial of permit, and a comparison of Michigan's performance and practices to those of other Great Lakes states. By December 1, 2006, the department shall issue a request for proposals and select an individual or entity as consultant to perform the benchmark analysis. The consultant selected to perform the benchmark analysis shall be Michigan based and have a proven ability to evaluate regulatory activities and make recommendations for improvement. This benchmark study shall be completed and submitted to the legislature by March 31, 2007. A stakeholder panel shall be established to assist the consultant in developing this benchmark study. The stakeholder panel shall have a total of 7 members as follows:~~

- ~~(a) Two individuals appointed by the speaker of the house, 1 representing permit holders and 1 representing small business.~~
- ~~(b) Two individuals appointed by the senate majority leader, 1 representing permit holders and 1 with performance audit experience.~~
- ~~(c) Three individuals appointed by the governor, consisting of 2 employees of the department and 1 person representing the general public.~~

Sec. 223. It is the intent of the legislature that, on or before January 1, 2007, the department renew the joint agreement, which was initially signed in January 2002, of the United States environmental protection agency and the state to pursue regulatory innovation. It is the intent that the agreement be renewed in a substantially similar form to uphold the principal tenets of the agreement, including, but not limited to, helping farms and farm operations voluntarily prevent or minimize agricultural pollution risks.

Sec. 225. The director shall take all reasonable steps to ensure businesses in deprived and depressed communities and Baldwin in Lake County compete for and perform contracts to provide services or supplies, or both. The director shall strongly encourage firms with which the department contracts to subcontract with certified businesses in depressed and deprived communities for services, supplies, or both.

Sec. 226. (1) The appropriation in section 102 includes \$13,476,900.00 from restricted funds. This funding source shall support the restricted fund requirements, pursuant to subsection (3), for selected line items in the executive operations and administrative support appropriation unit.

(2) The appropriation in section 113 includes \$4,310,900.00 from restricted funds. This funding source shall support the restricted fund requirements, pursuant to subsection (3), for the information technology appropriation.

(3) The department shall adopt a cost allocation plan for revenue sources supporting line items listed in sections 102 and 113. This cost allocation plan may be phased in over 3 fiscal years, beginning with the fiscal year ending September 30, 2007.

(4) The department shall provide a report on or before October 31, 2006 to the house and senate appropriations subcommittees on environmental quality and the house and senate fiscal agencies of the line item amounts and detailed revenue sources which support the restricted fund appropriations in sections 102 and 113.

Sec. 227. The department shall submit to the legislature a report that identifies permits that would be required to construct and operate a new oil or alternative fuels refinery in Michigan and recommends legislation and other measures that can be taken by this state to expedite or facilitate the processing of these permits. This report shall be prepared in consultation with the United States environmental protection agency and submitted to the house and senate appropriations subcommittees on environmental quality on or before April 30, 2007.

Sec. 229. The department of environmental quality shall not expend funds to enforce administrative rules, policies, guidelines, or procedures that are more stringent than 40 CFR parts 9, 122, 123, and 412, as finally promulgated. The department shall not implement or enforce administrative rules, policies, guidelines, or procedures that do 1 or more of the following:

(a) Require a farm to obtain a national pollution discharge elimination system permit under part 31 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3101 to 324.3133, if the farm has not been found by the department to have a regulated discharge of pollutants into waters of this state.

(b) Require submission of field specific information beyond on-site access to the department.

(c) Exceed the agricultural stormwater exemption as defined in the clean water act, 33 USC 1251 to 1387.

AIR QUALITY

Sec. 401. The department shall report quarterly, via the department's Internet website, on air quality program expenditures and revenues. The report shall include expenditures and revenues by fund source and by program function.

ENVIRONMENTAL SCIENCE AND SERVICES

Sec. 501. By July 1, 2007, the department shall prepare and submit a report to the state budget director, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations for the department of environmental quality, outlining the implementation of the Great Lakes water quality bond provided for in part 197 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.19701 to 324.19708, including, but not limited to, the amount of bonds issued and the date they were issued, the number of applications received for loans from the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a, the total amount of loans requested, a listing of the applicants receiving loans and the total amount of loans provided to those applicants, a listing of applicants whose loan applications were not approved and the reasons why those applications were not approved, the amount of the loans granted that were leveraged from bond proceeds, and the remaining bond proceeds and bond authorization.

Sec. 502. Revenues remaining in the interdepartmental transfers, laboratory services at the end of the fiscal year shall carry forward into the succeeding fiscal year.

Sec. 503. From the funds appropriated in part 1, the department, in cooperation with the department of agriculture, shall publish by September 30, 2007 an environmental regulatory compliance guide for the fruit and vegetable processing sector. This guide will cross-reference the updated 2006 edition of the "Michigan Manufacturers Guide to Environmental, Health and Safety Regulations". The department will develop by April 30, 2007 a plan and schedule to develop compliance guides for other small business categories. The guides shall provide information to assist small businesses in complying with state environmental regulatory requirements, including requirements pertaining to wetlands, and shall explain in plain language the actions a small business in each sector is required to take to comply with state regulatory requirements, including how to obtain necessary permits.

Sec. 504. The unexpended funds appropriated in part 1 for the brownfield grants and loans program are considered work project appropriations and any unencumbered or unallotted funds are carried forward into the succeeding fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the projects to be carried forward is to provide contaminated site cleanup.

(b) The projects will be accomplished by contract.

(c) The total estimated cost of all projects is \$8,811,000.00.

(d) The tentative completion date is September 30, 2011.

LAND AND WATER MANAGEMENT

Sec. 601. The department may waive permit fees for nonprofit organizations conducting approved stream habitat improvement projects.

Sec. 602. The department shall provide a report that defines appropriate beach grooming practices to the senate and house appropriations subcommittees on environmental quality and the senate and house fiscal agencies by April 30, 2007. These beach grooming practices shall be developed in consultation with beach grooming interest groups.

REMEDIAION AND REDEVELOPMENT

Sec. 701. The unexpended funds appropriated in part 1 for emergency cleanup actions, the refined petroleum product cleanup program, and the environmental cleanup and redevelopment program are considered work project appropriations and any unencumbered or unallotted funds are carried forward into the succeeding fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

- (a) The purpose of the projects to be carried forward is to provide contaminated site cleanup.
- (b) The projects will be accomplished by contract.
- (c) The total estimated cost of all projects is identified in each line-item appropriation.
- (d) The tentative completion date is September 30, 2011.

Sec. 702. From funds appropriated in part 1 for activities related to cleanup sites under part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, the department shall incorporate into remedial action plans area-wide or site-specific cleanup criteria derived from peer-reviewed risk assessment based on bioavailability studies, site-specific human exposure data, and any other scientifically based risk assessment studies that are available and relevant. The department shall submit a report listing efforts made by the department to comply with this section. This report shall be provided to the house and senate appropriations subcommittees on environmental quality on or before January 1, 2007.

Sec. 703. The appropriation in part 1 for the city of St. Louis water supply wells shall be used toward the cost of procuring an alternative water supply.

Sec. 704. Within 60 days of enactment of legislation establishing a permanent cleanup program supported by the refined petroleum fund, the department shall submit a listing of cleanup sites funded from the appropriation in part 1 for the refined petroleum product cleanup program to the senate and house appropriations subcommittees on environmental quality, the senate and house fiscal agencies, and the state budget director.

Sec. 705. The funds appropriated in part 1 for the environmental cleanup and redevelopment program shall be used to fund cleanup activities on the following sites:

Site Name	County
Former Parts Manufacturing	Alcona
Wayland Recycling	Allegan
Portside Cleaners	Antrim
Village of Mancelona	Antrim
Wickes Manufacturing Mancelona	Antrim
Kavco Landfill	Barry
Residential Wells Niles 3rd St	Berrien
Truck Terminals	Berrien
Butler Motor Speedway	Branch
Marshall Iron & Metal	Calhoun
Cass St Area Edwardsburg	Cass
Henco Enterprises	Cass
Southwest Cass Co Landfill	Cass
U.S. Aviox	Cass
Gladstone Creosote Discharge	Delta
Gladwin Bulk Oil Plant State St	Gladwin
Alma Iron Metal Smith Property	Gratiot
Gratiot County Landfill	Gratiot
Gratiot Metals Property	Gratiot

Americhem Corporation	Ingham
E.A. Woods	Iosco
Hedblum Industries	Iosco
Residential Wells Bachman Rd	Iosco
Buck Mine Discharge	Iron
Jourdan	Isabella
Horton Company	Jackson
Ryerson-Haynes	Jackson
Lakeside Refining	Kalamazoo
North 34th St Area Richland	Kalamazoo
Schoolcraft Area Organics Contamination	Kalamazoo
Franklin Metal Trading Corp (CEMSI)	Kent
Smiths Industries	Kent
Sparta Foundry (Federal Mogul)	Kent
Wash King Laundry	Lake
Howard Street Area	Lapeer
Grand Traverse Overall Supply	Leelanau
Adrian Dry Cleaner	Lenawee
Residential Wells Holly Road	Livingston
Mason County Landfill	Mason
Crystal Refinery	Montcalm
Peerless Plating	Muskegon
Story/Ott/Cordova Chemical Co	Muskegon
Zephyr, Inc (Naph-Sol Refining)	Muskegon
Coe's Cleaners	Oakland
Rockcroft Street Residential Wells	Oakland
Sanicem Landfill	Oakland
Six Star Landfill (AKA) Stan's Trucking	Oakland
Waterford Hills Sanitary Landfill	Oakland
Franklin Forge	Ogemaw
Hoskins Manufacturing	Oscoda
Fenske Landfill Ottawa Co	Ottawa
Former Burnside Manufacturing Co	Ottawa
MDOT M13 Ramps	Saginaw
National Plate Glass (L.A. Davidson)	Saginaw
Black River St 2381	Sanilac
Magnetek	Shiawassee
Fort Gratiot Sanitary Landfill	St. Clair
Huron Development Landfill	St. Clair
Winchester Disposal	St. Clair
Belgravia (former Hamlin Overton)	Van Buren
Green Acres Subdivision	Van Buren
CYB Tool (former)	Wayne
Feister Oil Co	Wayne
AAR Cadillac Manufacturing	Wexford
Cadillac Area Groundwater Contamination - Rexair	Wexford
Mitchell Bentley - Cadillac	Wexford
Formerly Used Defense Sites	Statewide

WASTE AND HAZARDOUS MATERIALS

Sec. 801. The department shall notify the members of the senate and house of representatives of the appropriate district at least 48 hours in advance of a departmental order which suspends or red tags any wholesale or retail sale of petroleum products. If imminent public health and safety concerns require action on a department order in less than 48 hours, the department shall notify the appropriate members of the senate and house of representatives of the department order within 48 hours after the action is completed.

Sec. 802. It is the intent of the legislature that the recommendations of the site review board, as established in section 11117 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11117, are the final approval for each site construction permit application that is referred to the board by the department.

Sec. 803. The department shall annually provide a report to the city of Romulus, city of Taylor, and Wayne County containing all of the following:

(a) Information concerning the release or discharge of any hazardous waste or hazardous waste constituent that may endanger public drinking water supplies or the environment.

(b) Information concerning the fire, explosion, or other release or discharge of any hazardous waste or hazardous waste constituent that could threaten human health or the environment or a spill that has reached surface water or groundwater.

(c) A summary of groundwater quality data, data graphs, data tables, statistical analyses to date, and identification of any statistically significant increases.

(d) With respect to the information described in subdivisions (a) to (c), a description of any noncompliance and its cause; the periods of noncompliance, including exact dates and times; whether the noncompliance has been corrected and, if not, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance and when those activities occurred or will occur.

WATER

Sec. 901. By February 1, 2007, the department shall submit a report on the department's use of the national pollutant discharge elimination system fund created in MCL 324.3121 for the previous fiscal year, to the senate and house appropriations subcommittees on environmental quality, the standing committees of the legislature with jurisdiction over issues primarily related to natural resources and the environment, and the senate and house fiscal agencies. The report shall include a summary of how the appropriations in part 1 for NPDES nonstormwater program were used for the various permissible uses of the fund and shall include specific information on all of the following:

(a) The number of compliance and complaint inspections completed, by category, the number of on-site compliance inspections conducted, and the number of compliance inspections that were not announced in advance to the permittee or licensee.

(b) The number and percent of permit and license inspections that were found to be in significant noncompliance, by category.

(c) The number of administrative enforcement actions taken for permit or license violations and the results of the enforcement actions, including the amount of fines and penalties collected.

(d) The number of judicial enforcement actions taken for permit or license violations and the results of the enforcement actions, including the amount of fines and penalties collected.

(e) A listing of the supplemental environmental projects agreed to as a result of a consent agreement including all of the following: the case name, the monetary value of the supplemental environmental project, and a description of the project.

Sec. 902. Of the funds appropriated in part 1 for safe drinking water assistance activities under part 54 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418, the department shall allocate the full 2% available for technical assistance under 42 USC 300j-12.

GRANTS

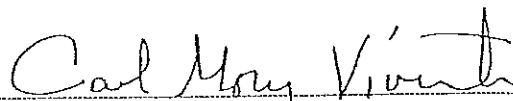
Sec. 1101. If a certified health department does not exist in a city, county, or district or does not fulfill its responsibilities under part 117 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11701 to 324.11720, then the department may spend funds appropriated in part 1 under the septage waste compliance program in accordance with section 11716 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11716.

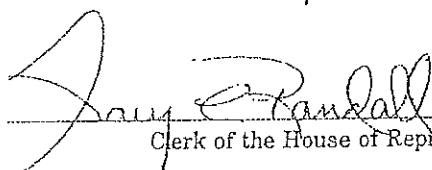
Sec. 1102. Of the funds appropriated in part 1 for scrap tire grants, \$100,000.00 shall be available for grants to communities to cover scrap tire fire suppression costs, provided owner liability bonds and other available funding sources have been exhausted.

Sec. 1103. The appropriation in part 1 for a real-time water quality monitoring grant is a grant to Macomb County and St. Clair County to support a real-time water quality monitoring program in the St. Clair watershed. By September 30, 2007, grant recipients shall report to the department on the plan, implementation, and status of the project. The department shall forward the report to the state budget director, the senate and house appropriations subcommittees on environmental quality, the senate and house standing committees on natural resources and environmental issues, and the senate and house fiscal agencies.

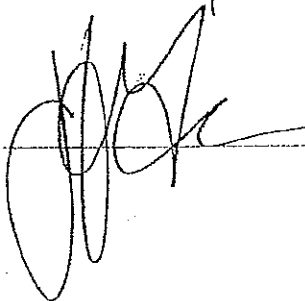
~~Sec. 1104. The appropriation in part 1 for Muskegon County is to provide partial funding support for the development of a wetlands at the Muskegon County wastewater treatment facility along Little Black Creek.~~

This act is ordered to take immediate effect.


Secretary of the Senate


Clerk of the House of Representatives

Approved 8/15/06 8:17 a.m.


Governor